

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA**

Dwaine Menzie,)	Civil Action No. 2:12-3102-RMG-BM
)	
Plaintiff,)	
)	
v.)	REPORT AND RECOMMENDATION
)	AND
Vista Sands Acquisition Company LLC, and Riverstone Residential SE LLC d/b/a Vista Sands Apartments,)	ORDER
)	
Defendants.)	
)	

This is an employment discrimination case that has been filed by the Plaintiff pursuant to Title 26 U.S.C. § 6330(d)(1)(A) and 42 U.S.C. § 12117. The file reflects that the Complaint was filed on October 26, 2012, and the summons were issued on October 26, 2012 (entered October 29, 2012).

Plaintiff is responsible for service of process. However, there is no evidence in the file that the Defendants have ever been served with process in this case. Pursuant to Rule 4(m), Fed.R.Civ.P., “[i]f a defendant is not served within one hundred and twenty (120) days after the complaint is filed, the court - on motion or on its own after notice to the Plaintiff - must dismiss the action without prejudice against that Defendant . . . but if the Plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period.”

Here, the time for service began to run on October 26, 2013, and the one hundred and twenty (120) day period for service provided by Rule expired on February 28, 2013. Therefore, unless Plaintiff has made proper service on the Defendants, this case is subject to dismissal.

Plaintiff is herein specifically advised and placed on notice that, in response to this Report and

Recommendation, he is to provide the Court with proof of service on the Defendants, or present good cause to the Court for any failure to serve the Defendants, within ten (10) days of the filing of this Report and Recommendation. Failure to do so will result in this case being dismissed.

Conclusion

If in response to this Report and Recommendation, Plaintiff submits to the Court proof of timely service on the Defendants, then in that event **IT IS ORDERED** that this Report and Recommendation be **vacated**, and that the file be returned to the undersigned for further proceedings.

In the event Plaintiff fails to submit to the Court proof of service on the Defendants, or to demonstrate good cause for having failed to do so,¹ within the time granted herein, it is recommended that this case be **dismissed**, without prejudice, pursuant to Rule 4(m), Fed.R.Civ.P.

The parties are referred to the Notice Page attached hereto.



March 1, 2013
Charleston, South Carolina

Bristow Marchant
United States Magistrate Judge

¹In the event Plaintiff has failed to serve the Defendants with service of process, but submits material to the Court asserting good cause for such failure, whether or not to accept Plaintiff's assertions of good cause shall be in the sole discretion of the District Judge in his review of this Report and Recommendation.

Notice of Right to File Objections to Report and Recommendation

The parties are advised that they may file specific written objections to this Report and Recommendation with the District Judge. Objections must specifically identify the portions of the Report and Recommendation to which objections are made and the basis for such objections. “[I]n the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must ‘only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.’” *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee’s note).

Specific written objections must be filed within fourteen (14) days of the date of service of this Report and Recommendation. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); *see* Fed. R. Civ. P. 6(a), (d). Filing by mail pursuant to Federal Rule of Civil Procedure 5 may be accomplished by mailing objections to:

Larry W. Propes, Clerk
United States District Court
Post Office Box 835
Charleston, South Carolina 29402

Failure to timely file specific written objections to this Report and Recommendation will result in waiver of the right to appeal from a judgment of the District Court based upon such Recommendation. 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140 (1985); *Wright v. Collins*, 766 F.2d 841 (4th Cir. 1985); *United States v. Schronce*, 727 F.2d 91 (4th Cir. 1984).

